



Addis Abeba – International Conference

**Italian Experience and Framework
on Asset Recovery in Fighting and Cracking
Down Organized Crime and Corruption**



DEFINITION AND PECULIARITIES OF ASSET RECOVERY

Asset Recovery is the process of tracing, freezing, confiscating and returning funds that have been obtained through illegal means.

It's a strategic issue both in domestic and in transnational fight against corruption and organized crime.

When some asset is dislocated in another country, the challenge is to open the way of justice for returning the funds to their country of origin.

The process is usually legally and politically complex and consequently also lengthy. It requires a combination of technical skills and involves multiple jurisdictions.



THE MULTILATERAL CORNERSTONE OF ASSET RECOVERY

- The adoption of “The United Nations Convention against Corruption” (UNCAC) on October 31st 2003 enshrined, for the first time, the recovery and repatriation of stolen assets as a fundamental principle of international public law.
- As per the Convention’s Chapter V, Article 51:
“The return of assets pursuant to this chapter is a fundamental principle of this Convention, and States Parties shall afford one another the widest measure of cooperation and assistance in this regard.”

This act has firmly established Asset Recovery on the international policy agenda. Since the Convention’s adoption, a number of domestic and international efforts to recover and repatriate stolen assets have been underway. Yet, only few cases have been successful to date.



G8, WORLD BANK AND G20 FOLLOW-UPS

At the Camp David G8 Summit in 2012, “The Asset Recovery Action Plan to Promote the Return of Stolen Assets” was endorsed.

Worldwide known is also the “World Bank Stolen Asset Recovery Law Enforcement Program” (STAR).

Today, under Chinese chairmanship, the G20 anticorruption working group is required to adopt its first 2016 document: “The G20 High-Level Principles on Anti-Corruption and Fugitive Repatriation and Asset Recovery” (FRAR).



AN OUTLINE OF INTERRELATED MULTILATERAL CONVENTIONS

- the Council of Europe adopted a pathfinder multilateral convention on judicial assistance: “The European Convention on Mutual Assistance in Criminal Matters” (Strasbourg, April 20th 1959) and its “Additional Protocol” (Strasbourg, March 17th 1978);
- the main EU juridical instrument, adopted in 1990, is “The Convention Implementing the Schengen Agreement of June 14th 1985”;
- the “UN Convention against Illicit Traffic in Drugs” (Vienna, December 19th 1988);
- the “UN Convention against Transnational Organised Crime” (UNTOC, known as the Palermo Convention from the Italian town where it was signed in December 2000) and its additional Palermo Protocols: a) Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children; b) Protocol against the Smuggling of Migrants by Land, Sea, and Air; c) Protocol against the Illicit Manufacturing and Trafficking in Firearms;
- the previously mentioned UN Convention against Corruption (UNCAC);
- moreover, several extant bilateral treaties on mutual legal assistance provide for specific arrangements for the delivery or apportionment of assets seized abroad (e.g. the treaty **inserire titolo, controparte e data** with the U.S. already includes such an arrangement).



THE WHYs AND HOWs OF THE G20 FOCUS ON ASSET RECOVERY

It's high time for G20 countries to ensure that stolen assets are recovered and returned to those citizens victimized by corruption: international commitments and standards require this focused involvement, due to the accelerating intertwining of corruption and organized crime in the past decade.

The crucial question is:

how Authorities can in practice assist other countries in the recovery of assets - including by providing assistance in asset tracing investigations, freezing, seizing, confiscation, and the enforcement of foreign restraint orders and confiscation orders - and the specific steps that other countries and foreign jurisdictions can take to access this assistance and cooperation?



THE NEED FOR EVOLUTIVE TOOLS AND SOLUTIONS FOR FACING THE PRESENT AND FUTURE CHALLENGES

The tools available (both formal and informal) will depend on the type of assistance sought for and the extant agreements, whether bilateral or multilateral.

The solutions should be tailored in a way apt to better:

- 1) the technical approaches underlying financial investigation, assets tracing, true ownership individuation and the recycling the confiscated property in the virtuous circuit of legal economy. As a consequence, the number and value of recovered assets will significantly grow, making them economically and socially productive, while positively impacting on the perception that a new process is underway: the building of an environment legally oriented towards a sustainable economic development;
- 2) the capability of foreign investigators, jurisdictional institutions and officials in identifying the assets or assisting home Authorities in this task.



THE BACKSTAGE OF ASSET RECOVERY: THE INEXTRICABLE NEXUS BETWEEN ORGANIZED CRIME AND CORRUPTION

The G20 is called to encourage the elaboration of innovative and pathfinder approaches on the intertwining of the global struggle against corruption and organized crime in the past decade.

If we wish to detect the reasons to assume that organized crime has a corrosive impact on corruption, we can stress the following:

- a) corruption is a catalyst to organized crime. Unless corruption is curbed, traditional deterrence measures such as toughening sanctions and polices can have the perverse effect of making crime and corruption strategic complements;
- b) corruption is a facilitating factor on organized crime.

Moreover, we are now entering into a new generation of access to justice whose cornerstone is stated by “The 2030 Agenda for Sustainable Development”, under the Sustainable Development Goal n. 16: “Promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels” and its subheadings.



MORE IN DEPTH CONSIDERATIONS

- Effective international cooperation for purposes of confiscation and contrast asset is critical in the fight against organized crime and corruption
- Transfer and hide overseas assets directly or indirectly obtained from criminal activities is a very common method used by criminal groups to preserve wealth illegally acquired.
- Organized crime has increasingly transnational nature, which frequently adds the involvement of more countries in money laundering and in the re-use of illicit funds.
- If the property to be confiscated is found in another country, the differences between national systems of confiscation could cause difficulties in the execution of the measure adding to the traditional obstacles also raised by the peculiarities of financial investigations and international asset .



G20 POSSIBLE AVENUES IN TACKLING THE ORGANIZED CRIME-CORRUPTION NEXUS

The organized crime-corruption nexus can only be fought, in an integrated way, by a two pronged approach, involving civil society in the one hand and the promotion of effective law and enforcement on the other.

More in details, there is a need for:

- measures aimed at strengthening the criminal justice system, by improving the legal framework and investigative tools, establishing specialized anti-mafia units (an area where Italy has an internationally recognized capability);
- measures aimed at enhancing judicial know-how and accountability: judicial integrity is to be considered as the most important predictor of the extent of organized crime;
- civil society participation and involvement is a critical to promote transparency and accountability mechanisms as well as support justice sectorial reform through civil society institutions such as Bar Associations and Law Schools.
- given the interdependent nature of corruption and organized crime, traditional measures aiming at increasing policing and sanctions against organized crime need to be accompanied by a crackdown on corruption.

Close monitoring and innovative global crime/corruption crashing activities should be focused on the evolving impact of ICT.



THE ITALIAN MODEL ON ASSET RECOVERY

It is based on 4 factual premises, synthonic to the evaluation of “The Financial Action Task Force on Money Laundering” (FATF), housed at the headquarters of the OECD in Paris:

- a) organized crime is profit oriented;**
- b) profit is at the core of corruptive phenomena;**
- c) illegal capital is systematically flowed into the licit market so to: increase the profit margins; better cover-up the illicit activities; facilitate the gradual social infiltration of criminal groups;**
- d) cracking down on illicit capital is the best way to quantitatively reduce the constant regeneration of criminal associations and the foundations of their negative social influence and territorial control.**

Therefore, all forms of contemporary crime need to be tackled with high impact instruments of criminal assets seizure.



THE CONCEPTUAL APEX OF THE ITALIAN MODEL ON ASSET RECOVERY

It has been stated by the Italian Constitutional Court, whose vision can be summarized as follows:

the wealth originated by illicit assets should not be lost to the surrounding communities. Consequently, all efforts should be deployed to include the confiscated property into the virtuous economic circuit.

A significant part of the appeal of the Italian model lies also in its symbolic allure and usefulness as a mechanism to express disapproval. Its proponents sought to maintain higher moral boundaries between acceptable and unacceptable behaviour in international society.

It is also highly rewarding that a new generation of transnational institutions are playing an important role in underlining the crucial role of asset recovery in fighting and cracking down organized crime and corruption. They are effectively grounding their advocacy in science, compassion, health and human rights.



THE PIVOTAL ROLE OF CAPACITY BUILDING IN ASSET RECOVERY: THE ITALIAN EXPERIENCE AND VISION

On the basis -among others- of its international best practice represented by the 1° and 2° Plan de Apoyo against organized crime in Central America, Italy underlines the relevance of the following dimensions:

- **policy transfer itself;**
- **lesson drawing;**
- **legal transplantation;**
- **policy learning;**
- **institutional transfer.**

A close examination of each field places at center stage different actors, institutional issues and degrees of obligations.

We believe that anti-corruption policy transfer cannot be reduced only to ideas of political objectives.



More in detail, it appears quite useful to single out:

- a) the exchange of instruments, practices and programs of governance between “exporter” and “importer” systems;**
- b) the dynamics of the said exchange which can be declined as follows:**
 - direct and total transfer of an anticorruption model,**
 - a process of opening up to an external idea,**
 - the hybridization of various models;**
- c) the different mechanism of legal obligation or imposition. As a matter of fact, anticorruption policy transfers can be: voluntary; forced; totally imposed;**
- d) the link between policy transfer and success or failure. Taking into account the cases where the transfer of anticorruption solution models failed, also enables the policymaker to reveal the transfer mechanisms by focusing particularly upon factors that facilitate or block transfer. Accurately screening the said factors will help very much both us and other States in drawing a future, better framed anticorruption road map.**



Furthermore, there is a need to reach an adequate comprehension of how anticorruption Agents of G20 Countries participate in the following mainstream activities which are at the roots of dynamics of import/export :

- **the anticorruption policies construction;**
- **their legitimation;**
- **their distribution.**

In the Italian view anticorruption policy transfer raises two paramount questions: convergence and technicity .

Any transfer process leads to adjustment and adaptation phenomena, depending on the institutional and political configurations where is it applied. As the consequence, policy transfer doesn't necessarily imply convergence between exporter and importer's systems . In some cases, renationalization processes occur where the transferred model is influenced by the national environment and readjusted accordingly, because of reception, translation and appropriation mechanisms.

Through the processes of anticorruption policy transfer, it is also possible to identify a phenomenon of policy-making's depolitization . Instrumentalization of governance's categories can lead to a shifting from a political approach to a highly technical approach. The consequence of this trend is to evacuate the divergent political interest that could constitute obstacles to transfer .